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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,860	08/22/2001	Michael R. McClain	002A.0032.U1(US)	9128

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EXAMINER

TORRES, ALICIA M

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,860

Applicant(s)

MCCLAIN, MICHAEL R.

Examiner

Alicia M Torres

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☒ Claim(s) 1-8, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no structure set forth on the draft rod to provide the function of limiting upward vertical movement of the deck relative to the frame to a predetermined upper stop location.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Seegert.
5. In regards to claim 1, Seegert discloses a lawn mower (12) having a frame (shown in part at 48), a motor (22) connected to the frame (48), a cutting blade (see column 3, lines 39-41) connected to the motor (22), a deck (14) located above the cutting blade and vertically movably mounted to the frame (48, see column 4, lines 29-30), a draft rod (34) connected between the

Art Unit: 3671

deck (14) and a portion of the frame (48, see column 3, lines 45-46), the draft rod (34) being movably connected between the deck (14) and the portion of the frame (48) to limit upward vertical movement of the deck (14) relative to the frame (48) to a predetermined upper stop location.

6. In regards to claims 2-4, Seegert discloses that the mounting portion of the frame comprises an axle assembly (48, see column 3, lines 54-60) of the lawnmower (12), as per claim 2, wherein the axle assembly (48) comprises a hole (52) and a portion (38) of the draft rod (34) movably located and longitudinally slidable in the hole (52, see column 4, lines 13-17), as per claims 3 and 4.

7. In regards to claims 5-7, Seegert discloses a draft rod (34) comprising an enlarged section (unnumbered), which is larger than the hole (52) in the axle assembly (48) and comprises a bent portion of the draft rod (34), as per claims 6 and 7, located between the axle assembly (48) and the deck (14, see figure 3).

8. In regards to claim 8, Seegert discloses wherein the deck (14) comprises a bracket (30) on an exterior side of the deck (14) and an end of the draft rod (34) is pivotably connected to the bracket (30).

9. In regards to claims 19 and 20, Seegert discloses a lawn mower (12) comprising a frame (48), a motor (22) connected to the frame (48), a cutting blade (see column 3, lines 39-41) connected to the motor (22), a deck (14) vertically movably connected to the frame, the deck (14) being located over the cutting blade, a vertical movement limiting bar (34) connected between the deck (14) and a portion of the frame (48), the limiting bar (34) being pivotably connected to a mounting section (30) of the deck (14) and longitudinally slidably connected

Art Unit: 3671

through a hole (52) in the portion of the frame (48), wherein the limiting bar (34) comprises a stop surface formed by a bent section of the bar (34, see figure 3), as per claim 20, located between the deck (14) and the portion of the frame (48) for limiting longitudinal movement of the bar (34) through the hole (52) in the portion of the frame (48).

Response to Arguments

10. In response to applicant's argument that Seegert fails to disclose a draft rod that is used to limit upward vertical movement as per claims 1 and 19, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Neither claims 1 nor 19 set forth when the limit of movement will occur. Therefore, if the mower deck were forced upward a sufficient amount, the bend in the draft rod of Seegert would eventually reach the hole, stopping any further movement. Further, that the mower belt would become too loose in order for the bent portion of the draft rod of Seegert to reach the hole is a non-issue, as the limiting effect needs not happen during in-use operation, but simply be capable of such function, as per the claims.

Allowable Subject Matter

11. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3671

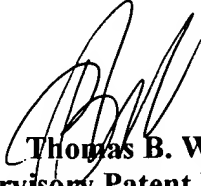
Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Burdsall et al., Kuhn et al., and Wood have been cited as of interest.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.


Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
September 17, 2003